

BEFORE THE GOVERNOR'S OFFICE  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PUBLIC HEARING
14.8.101, 14.8.102, 14.8.103, 14.8.104,	)	ON PROPOSED REPEAL AND
14.8.105, 14.8.106, 14.8.107, 14.8.108,	)	ADOPTION
14.8.109, 14.8.110, 14.8.121, 14.8.122,	)	
14.8.123, 14.8.124, 14.8.125, 14.8.126,	)	
14.8.127, 14.8.128, 14.8.201, 14.8.202,	)	
14.8.203, 14.8.204, 14.8.205, 14.8.206,	)	
14.8.210, 14.8.211, 14.8.212, 14.8.213,	)	
14.8.214, 14.8.218, 14.8.219, 14.8.220,	)	
14.8.221, 14.8.225, 14.8.226, 14.8.227,	)	
14.8.228, 14.8.229, 14.8.230, 14.8.301,	)	
14.8.302, 14.8.303, 14.8.304, 14.8.305,	)	
14.8.306, 14.8.307, 14.8.308, 14.8.309,	)	
14.8.310, and 14.8.311 and the adoption of	)	
New Rules I through VIII pertaining to	)	
energy supply emergency rules	)	

TO: All Concerned Persons

1. On September 18, 2019, at 1:00 p.m., the Department of Environmental Quality, acting on behalf of the Governor's Office, will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal and adoption of the above-stated rules. Before the hearing, on the same day, at 12:30 p.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [sscherer@mt.gov](mailto:sscherer@mt.gov).

3. The Governor is proposing to repeal many of the substantive rules in ARM Title 14, chapter 8, subchapters 1 through 3 for the reasons set forth below for the repeal of those rules. All remaining substantive requirements concerning energy emergencies or energy supply alerts are proposed to be repealed and adopted as new rules in new subchapter 4. This would allow one rule to address requirements for distributors of petroleum, natural gas, or electricity, and avoid repetition of similar requirements for each type of energy. It would also make the rules easier to read and understand.

4. The rules proposed for repeal are as follows:

14.8.101 PURPOSE

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: This rule, concerning the purpose of the subchapter, is unnecessary because there is no reason to have a rule on the purpose of a subchapter for which all substantive rules are being proposed to be repealed. In addition, rules describing the purpose of a subchapter are not favored because the effect of a rule should be clear from its text and a purpose rule might conflict with the text of a rule in the subchapter. Therefore, this rule should be repealed.

14.8.102 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: This rule, containing definitions for ARM Title 14, chapter 8, subchapter 1, which concerns petroleum fuel shortages, is unnecessary and should be repealed. New Rule I would contain definitions for the new energy supply alert and energy emergency rules. Many of the terms defined in ARM 14.8.102 are not being used, so definitions for those unused terms will not be included in New Rule I.

14.8.103 NOTIFICATION OF THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: This rule is being proposed to be repealed and its requirements, concerning notification by the Governor of a declaration of a supply alert or emergency, are being proposed to be rewritten and adopted in New Rule II. The first sentence, concerning declaration of a supply alert or emergency, is unnecessary because 90-4-309 and 90-4-310, MCA, authorize the Governor to declare a supply alert or emergency. This provision is therefore not being included in New Rule II.

14.8.104 ENERGY SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.104, which concerns supply alerts for motor gasoline, because it is unnecessary. The only rules

to which it refers, ARM 14.8.105 and 14.8.106, are being proposed for repeal. The reasons for the proposed repeal of those rules are set out below. Therefore, ARM 14.8.104 should be repealed.

14.8.105 PUBLIC SECTOR SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA  
IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.105, which concerns public sector supply alert procedures for motor gasoline, because the Governor has authority in 90-4-309, MCA, to require state agencies and political subdivisions to reduce energy usage and promote conservation, waste prevention, and salvage of energy related resources. This administrative rule is not necessary to implement that authority and so is proposed to be repealed.

14.8.106 PRIVATE SECTOR SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA  
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.106 because it is unnecessary. It refers to non-binding requests concerning energy conservation that the Governor may make to the public or certain businesses and the Governor already has the inherent authority to make non-binding requests.

14.8.107 ENERGY SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA  
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.107 because the only rules to which it refers, ARM 14.8.108 and 14.8.109, are being proposed for repeal.

14.8.108 PUBLIC SECTOR SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA  
IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.108 because it is unnecessary. The Governor has authority under 90-4-309, MCA, in an energy supply alert, to require state agencies and political subdivisions to reduce energy

usage and promote conservation, waste prevention, and salvage of energy related resources. Because (1) and (2) concern those matters, they are redundant and it is appropriate to repeal them.

Section (3) gives the Governor authority to require a state agency that no longer exists, the Department of Health and Environmental Sciences, to examine and make recommendations concerning air quality restrictions affecting middle distillate usage or available substitutes. The Department of Environmental Quality is the agency now charged with regulating air quality, including applicable air quality aspects of middle distillate use. The Governor has inherent authority to require executive branch state agencies such as the Department of Environmental Quality to examine air quality restrictions affecting middle distillate use and to make recommendations about such restrictions to the Governor. State agencies must carry out such energy supply alert measures as ordered by the Governor. 90-4-311, MCA. An order to examine restrictions relating to air quality concerning middle distillate use and make recommendations regarding them would be covered under that statute. Therefore, (3) is not necessary and should be repealed.

Section (4) requires the Public Service Commission (PSC) to examine restrictions relating to fuel hauling and make recommendations to the Governor. Fuel hauling is subject to safety regulation by the Montana Department of Transportation (MDT). See 61-10-154, MCA, and implementing rules at ARM Title 18, chapter 8. However, a motor carrier may not operate, which includes hauling fuel, without a certificate of public convenience and necessity from the PSC. 69-12-311, MCA. The Governor already has inherent authority to require executive branch state agencies such as MDT to conduct studies and make recommendations. Under 90-4-311, MCA, all state agencies, including the PSC, are required to implement supply alert and emergency measures ordered by the Governor. An order to examine restrictions on fuel hauling and make recommendations regarding them would be covered under that statute. Therefore, (4) is not necessary and should be repealed.

Section (5) gives the Governor authority to order state agencies with more than 10,000-gallon storage capacity for middle distillates of petroleum to report reserves if ordered by the Governor in a supply alert. The Governor has both inherent and statutory authority to make such orders and state agencies are required to follow them. 90-4-311, MCA. Therefore, no rule is necessary.

Section (6) authorizes the Governor to request the federal Department of Energy (DoE) to redirect supplies of middle distillates to Montana. The Governor has inherent authority to make such a request; therefore, this provision is unnecessary. In addition, the DoE has no obligation to comply, so this provision should not be in a rule.

#### 14.8.109 PRIVATE SECTOR SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.109 for the same

reasons given for the proposed repeal of ARM 14.8.106.

14.8.110 ENERGY SUPPLY ALERT PROCEDURES - AVIATION  
GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.110 because it is unnecessary. The Governor has the inherent authority to make requests for voluntary action to aviation gasoline distributors.

14.8.121 ENERGY EMERGENCY PROCEDURES - MOTOR  
GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.121, concerning energy emergency procedures for motor gasoline, because the two rules to which it refers, ARM 14.8.122 and 14.8.123, are being proposed for repeal.

14.8.122 PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES -  
MOTOR GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.122 because it is unnecessary. The Governor has authority under 90-4-310, MCA, to order state agencies to act in an energy emergency and has inherent authority to make non-binding requests of state employees.

14.8.123 PRIVATE SECTOR EMERGENCY PROCEDURES - MOTOR  
GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.123 because it is unnecessary. Section (1), concerning requests by the Governor to companies to voluntarily reduce energy consumed in travel, is unnecessary because the Governor has the inherent authority to make requests of the private sector. In addition, because compliance would be voluntary, it is not appropriate to have it in rule. The remaining sections, concerning days and hours of operation and numbers of gasoline containers that may be dispensed

in an energy emergency, are unnecessary because the Governor already has the authority under 90-4-310, MCA, to make such orders. It is more appropriate to specify the details of such orders in an emergency declaration or subsequent order.

14.8.124 ODD-EVEN DAY GASOLINE DISPENSING SYSTEM

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.124 for the same reasons given for the proposed repeal of ARM 14.8.123.

14.8.125 ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA  
IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.125 because the two rules to which it refers, ARM 14.8.126 and 14.8.127, are being proposed for repeal.

14.8.126 PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.126, which authorizes the Governor to require building owners to lower thermostat settings for space heating and to take other measures to conserve consumption of middle distillates, because it is unnecessary. The Governor already has the authority in 90-4-310, MCA, to order government agencies and the private sector to conserve energy, including middle distillates, in an energy emergency. The Governor already has authority under 90-4-310(4)(b), MCA, to suspend or modify requirements that affect the use of energy, including middle distillates.

14.8.127 PRIVATE SECTOR ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.127, which authorizes the Governor to order retailers, motor carriers, trucks, and commercial establishments to take certain actions to conserve middle distillates and to

prohibit practices that raise their prices, for the same reasons given for the repeal of ARM 14.8.126.

#### 14.8.128 ENERGY EMERGENCY PROCEDURES - AVIATION FUEL

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.128, which authorizes the Governor to request aviation gasoline sellers to prioritize aviation gas sales to emergency services, because it is unnecessary. The Governor already has the authority under 90-4-310(4)(a), MCA, to implement priorities for the allocation of any type of fuel. In addition, the existing rule authorizes the Governor to make requests for voluntary action, which the Governor has inherent authority to do. Because the request is for voluntary action, it does not belong in a rule.

#### 14.8.201 PURPOSES

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.201 for the same reasons given for the proposed repeal of ARM 14.8.101.

#### 14.8.202 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.202 for the same reasons given for the proposed repeal of ARM 14.8.102.

#### 14.8.203 REGISTRATION

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: ARM 14.8.203 authorizes the Governor to request certain governmental and intergovernmental entities and Montana utilities to designate an employee to supply information requested under this rule. It is proposed to be repealed because a rule is not necessary for the Governor to make a non-binding request. Requirements for contact and substantive information from energy distributors are proposed for adoption in New Rule III.

#### 14.8.204 UTILITY CURTAILMENT PLANS

AUTH: 90-4-316, MCA

IMP: 90-4-307, MCA

REASON: The Governor is proposing to repeal ARM 14.8.204, concerning utility curtailment plans, because it is unnecessary. The Governor has authority under 90-4-307(1), MCA, to require curtailment plans from distributors and they are required to comply by 90-4-313, MCA. The submission must be "in the form and within limits" specified by the Governor. Therefore, there is adequate authority in statute and a rule is unnecessary.

#### 14.8.205 INFORMATION

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.205, which concerns information required to be submitted to the state by certain non-profit corporations and utilities. New Rule III would contain requirements for distributors of energy to submit information to the state concerning energy shortages that could lead to declaration of a supply alert or emergency and for information required to be submitted during an emergency or supply alert. The reasons for repeal of provisions of ARM 14.8.205 that are not being proposed to be adopted in New Rule III are set forth below.

The Governor is proposing to repeal (1) because it is no longer necessary. Reservoir inventory information is now publicly available. In addition, the Governor cannot by rule impose requirements on federal or non-Montana agencies. Therefore, no rule is needed.

Section (2), concerning reporting of load relative to resources by an electrical distributor experiencing a shortage, is proposed to be deleted and replaced with language in New Rule III(1) that clarifies and specifies what triggers the reporting requirement and the frequency of reporting. "Utility" is used in the language proposed to be repealed and "distributor," which is defined broadly in 90-4-302(2), MCA, to mean any entity engaged in generating, producing, transmitting, or distributing energy in Montana, is proposed to be used in the new language because it more accurately identifies the functions of an electricity business that, if it experienced a shortage, could result in the declaration of a supply alert or emergency. The information listed in proposed New Rule III(1) is necessary for the Governor to be able to determine if a supply alert or emergency is necessary.

The requirement for information proposed in New Rule III(2) is necessary for the Governor to be able to manage a supply alert or emergency while those declarations are in effect.

Current (3) is proposed to be repealed because the proposed language in New Rule III(2) contains reporting requirements.

#### 14.8.206 EVALUATING INFORMATION

AUTH: 90-4-316, MCA

IMP: 90-4-308, MCA



REASON: The Governor is proposing to repeal (1) because it concerns voluntary curtailment. The Governor has the inherent authority to request voluntary curtailment of electrical energy distribution. Because any curtailment under (1) would be voluntary, no rule is necessary.

The Governor is proposing to repeal (2) because it concerns evaluations of information received under ARM 14.8.205 concerning depletion of reservoir generating capabilities and recommendations for different stages of mandatory curtailment based on the severity of those depletions. Section (2) is unnecessary because the Governor has authority in 90-4-310(4), MCA, to curtail energy usage, and the authority to take curtailment actions regarding specific stages of an emergency is merely a subset of the general authority to require curtailment. The stages of an emergency in the rule are not the way emergencies are handled today, and are therefore unnecessary. Today's approach is to address the particular responses through an incident command approach, where the appropriate actors determine the type and level of response needed. New Rule IV would require the Department of Environmental Quality to evaluate the information provided under New Rule III and propose action to the Governor.

#### 14.8.210 DETERMINING THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA

IMP: 90-4-308, 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.210 because it is unnecessary for the following reasons. The energy policy committee referred to in the rule no longer exists. Proposed New Rule IV would authorize the Department of Environmental Quality to make recommendations to the Governor concerning electrical supply shortages. Section 90-4-308, MCA, sets out the matters the Governor is required to consider when determining whether to declare a supply alert or emergency and 90-4-306, MCA, requires the Governor to solicit the advice of consumers and distributors both before and during all phases of supply alerts or emergencies.

#### 14.8.211 DECLARATION OF ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.211 for the following reasons. The first sentence, which requires the Governor to declare a supply alert or emergency on determining that the requisite situation exists, is unnecessary because 90-4-310, MCA, authorizes the Governor to declare an energy supply alert or emergency on a finding that certain statutory factors have been met. The requirements of the remaining sentences, which require the

Governor to notify state and local governments and utilities affected by a supply alert or emergency, of the declaration and its requirements and to issue a press release, would be addressed in proposed New Rule II.

#### 14.8.212 ENERGY SUPPLY ALERT PROCEDURES

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.212 because it does not have any substantive requirements and the only rules to which it refers, ARM 14.8.213 and 14.8.214, are being proposed for repeal.

#### 14.8.213 SUPPLY ALERT STAGE 1

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.213 because it is unnecessary or inconsistent with legal authority. Section (1) does not contain any substantive requirements and so is unnecessary.

Section (2) is unnecessary because the Governor has authority under 90-4-309, MCA, to order state agencies and local governments to act in a supply alert and they are required by 90-4-311, MCA, to comply. The portion of (2) authorizing the Governor to make requests of utilities and consumers for voluntary action in a supply alert is unnecessary because the Governor has inherent authority to make requests and because the requests for voluntary action are not binding and are not appropriate in a rule.

Section (3) is not necessary because it indicates that compliance by consumers is voluntary and does not impose any duties on local governments or utilities.

Section (4) is not necessary because it states that enforcement is not applicable to the requirements of (2). The Governor has authority under 90-4-309 and 90-4-311, MCA, to require state agencies and local governments to comply with orders in a supply alert.

#### 14.8.214 SUPPLY ALERT STAGE 2

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-311, MCA

REASON: ARM 14.8.214 is proposed for repeal because it is not necessary to establish requirements for stages of a supply alert and for the same reasons given for the repeal of ARM 14.8.213.

#### 14.8.218 ENERGY EMERGENCY PROCEDURES

AUTH: 90-4-316, MCA  
IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.218 because all of the rules to which it refers are being proposed for repeal. The Governor's authority to act after declaring an emergency is set out in 90-4-310, MCA, and no rule is necessary.

#### 14.8.219 ENERGY EMERGENCY STAGE 1

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.219 because its provisions are either unnecessary or repeat authority already in statute.

#### 14.8.220 ENERGY EMERGENCY STAGE 2

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-311, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.220 because it is unnecessary. The reason for eliminating stages of an emergency is the same as the reason given for the proposed repeal of ARM 14.8.206. Sections (2)(c)(i) and (ii) authorize the Governor to make requests of certain state, federal, and private entities. This is unnecessary because the Governor has inherent authority to make requests. In addition, the Governor has broad authority in 90-4-310, MCA, to act in an emergency and no rule is necessary.

#### 14.8.221 ENERGY EMERGENCY STAGE 3

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.221 because it addresses stage 3 emergencies and the stages of emergencies in this subchapter would be deleted for the reasons given for the proposed repeal of ARM 14.8.206.

#### 14.8.225 PRIORITY LOAD CUSTOMERS - EXEMPTION PROCEDURE

AUTH: 90-4-316, MCA  
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.225 because it is unnecessary and does not reflect how electrical utilities supply power to users. It addresses stage 2 emergencies and the stages of emergencies in this subchapter would be deleted for the reasons given for the proposed repeal of

ARM 14.8.206. The Governor has authority to curtail use of electricity in an emergency. In addition, utilities generally lack the ability to control the supply to individual users, except for a few large users that have direct, or "radial," lines that service them. The department may work with electrical utilities to identify essential users and develop approaches to reduce usage by nonessential users and help ensure supply to essential users.

#### 14.8.226 NON-PRIORITY LOAD APPELLANTS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.226 because it is unnecessary. It concerns requests for, appeals from, denial of, and non-priority load exemptions in a stage 2 emergency. However, the stage classifications of an emergency are proposed for repeal. See the reason for proposed repeal of the stages of an emergency in ARM 14.8.206. So, this rule would no longer be appropriate and should be repealed. The Governor has authority under 90-4-310, MCA, to curtail the use of electricity in an emergency and to require curtailment plans from utilities. Any entity required to curtail may communicate informally with the Governor. The reasons for elimination of an administrative appeals process are set out in the statement of necessity for the repeal of ARM 14.8.229.

#### 14.8.227 MONITORING

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.227, which addresses monitoring during two stages of energy supply alerts and three stages of energy emergencies. However, those stages are being proposed to be eliminated. See the proposed repeal of ARM 14.8.206 and the reasons for that proposed repeal.

In addition, (1)(c) of the existing rule purports to require action from two non-Montana entities that are voluntary associations of electrical generators that coordinate regional electric power matters, the Northwest Power Pool and the Mid-continent Area Power Pool. However, Montana lacks authority over those entities because they are private non-profit entities located outside of Montana. Therefore, this rule should be repealed.

#### 14.8.228 ENFORCEMENT

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-311, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.228 because it is unnecessary. Requirements for compliance with and enforcement of orders issued during a supply alert or emergency are contained in 90-4-313, 90-4-314, and 90-4-

319, MCA, and it is not necessary to repeat their requirements in a rule. In addition, (3) concerns curtailment and the Governor has curtailment authority in 90-4-310(4)(a), MCA, so the authority in this rule is not necessary.

Sections (4) through (6) concern surcharge and rates for consumption of electricity and pass-through of expenses incurred in responding to a supply alert or emergency. The Public Service Commission has authority in 69-8-210, MCA, and ARM 38.5.8226 to approve interim rate increases to allow cost recovery. To the extent the Governor has authority in 90-4-310, MCA, over the matters in (4) through (6), no rule is necessary.

#### 14.8.229 APPEALS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.229 because (1) there is no authority in statute for appeals, and (2) an appeals process is unnecessary and unlikely to be fruitful. The short-term nature of emergencies makes it unlikely that an appeal could be heard or decided, and that relief could be granted, before the emergency terminates. It is more likely that a court action for a temporary restraining order or preliminary injunction could be heard and decided, with appropriate relief granted, while the emergency is still in effect.

#### 14.8.230 ADJUSTMENTS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.230 for the same reasons set forth for the proposed repeal of ARM 14.8.229.

#### 14.8.301 PURPOSE

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.301 for the same reasons given for the proposed repeal of ARM 14.8.101.

#### 14.8.302 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.302 for the same reasons given for the proposed repeal of ARM 14.8.102.

14.8.303 REQUIREMENT TO PROVIDE ADVANCE NOTIFICATION OF PETROLEUM SUPPLY SHORTAGES

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of (1) and (2) is the same as set forth for the repeal of ARM 14.8.205. New Rule III would contain requirements for distributors of energy to submit information to the state concerning energy shortages that could lead to a declaration of a supply alert or emergency and for information required to be submitted during an emergency or supply alert.

14.8.304 REQUIREMENT TO FILE MONTHLY REPORTS

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: This rule is proposed to be repealed because the existing rules are unwieldy; their provisions for submission of information would be combined into New Rule V. New Rule V would contain requirements that refiners and gas plant operators provide the department with certain monthly reports.

14.8.305 REQUIREMENT TO FILE ANNUAL REPORTS

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: This rule is proposed to be repealed because it is unnecessary. EIA 25 was an annual report required by the Energy Information Administration, a part of the federal Department of Energy. It concerned monthly distribution of petroleum products by retail distributors. That report is no longer used. Another report, EIA 782c, is issued monthly and has supplanted EIA 25. The Governor is proposing to require submission of that report in New Rule V. Therefore, no report is necessary and the rule should be repealed.

14.8.306 FORM AND FORMAT OF REPORTS

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning form and format of the reports would be added to New Rule V.

14.8.307 REPORTING PERIODS

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.307 because it is unnecessary. The requirements of (1) are proposed to be moved to New Rule V to consolidate the reporting periods with the substantive requirements for the reports. Provisions requiring submission of reports for past periods are proposed to be repealed because the department has all the historical natural gas and refined petroleum data necessary to monitor historical changes in petroleum and natural gas movements across the state. Section (2) concerns reporting periods for submissions required in ARM 14.8.305, which is being proposed for repeal. Therefore, (2) is unnecessary and should be repealed.

#### 14.8.308 RESUBMISSIONS

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning resubmission of erroneous, incomplete, illegible, or missing reports would be contained in New Rule VI.

#### 14.8.309 REPORTING AGENCY

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.309 because it is unnecessary. All the rules referenced in the rule either have been proposed for repeal or have been proposed to be amended to require that submissions to the department must be made via e-mail. Therefore, ARM 14.8.309 should be repealed.

#### 14.8.310 TRADE SECRETS

AUTH: 90-4-316, MCA  
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning protection of trade secrets or other proprietary information are being proposed to be included in New Rule VII.

#### 14.8.311 EXEMPTIONS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning exceptions from compliance are being proposed to be included in New Rule VIII.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Confidential information" has the same meaning as in 2-6-1002, MCA.

(2) "Customer" means any individual, partnership, corporation, firm, governmental entity, or organization that purchases an energy resource within Montana.

(3) "Department" or "DEQ" means the Department of Environmental Quality as defined in 2-15-3501, MCA.

(4) "Distributor" has the same meaning given in 90-4-302, MCA.

(5) "Emergency" means an energy emergency as defined in 90-4-302, MCA.

(6) "Energy" has the same meaning given in 90-4-302, MCA.

(7) "Firm" means any person, as defined in 90-4-302, MCA, engaged in any activity covered by these rules.

(8) "Local government" means any county, city, town, municipal corporation, or other political subdivision of the state.

(9) "Person" has the same meaning given in 90-4-302, MCA.

(10) "Petroleum" means crude oil and petroleum products.

(11) "Petroleum products" has the same meaning given in 90-4-302, MCA.

(12) "Supply alert" means an energy supply alert as defined in 90-4-302, MCA.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-309, 90-4-310, MCA

REASON: These terms are used to set out substantive requirements in the rules in new subchapter 4 and need to be defined. "Emergency" and "supply alert" are being defined as a shorthand way of referring to an "energy emergency" and an "energy supply alert" to make the rules easier to read. "Petroleum" is not specifically defined in statute. The Governor believes that collection of limited data concerning crude oil is necessary for the Governor and the department to plan for, and take appropriate action during, supply alerts or emergencies. The Governor therefore proposes to define petroleum to include crude oil. The Governor proposes to delegate to the department the authority to collect limited data on crude oil in New Rule V on forms that are already submitted to the Montana Board of Oil and Gas Conservation.

#### NEW RULE II DECLARATION OF SUPPLY ALERT OR EMERGENCY



(1) The Governor shall give written notice to state agency heads, local government entities, appropriate trade groups, and distributors affected by a declaration of a supply alert or emergency of the declaration and its requirements. The Governor shall issue a news release describing the action taken.

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-310, 90-4-311, 90-4-313, 90-4-314, MCA

REASON: New Rule II would require the Governor to give written notice to entities affected by a declaration of a supply alert or emergency of the declaration and its contents and to issue a news release describing the action taken. The reason is that affected entities and the public should be informed of such a declaration.

NEW RULE III INFORMATION REQUIRED OF DISTRIBUTOR (1) If a distributor experiences an event that the distributor believes may cause or is causing an energy supply shortage or other condition that may result in a supply alert or emergency as defined in 90-4-302, MCA, or if the Governor believes such an event has occurred and notifies the distributor, the distributor shall, within 24 hours after the event occurs or the Governor gives notification, report the event to the department's duty officer at (406) 431-0014, and send the following information concerning the event to the department at [DEQEnergyEmergency@mt.gov](mailto:DEQEnergyEmergency@mt.gov);

- (a) a current status report including geographic area of impact;
- (b) estimated effect on energy customers and on health/human safety;
- (c) effect of the incident on infrastructure, including other energy sectors, transportation, food distribution, and emergency services;
- (d) expected duration;
- (e) recommended actions the public or industry can take to reduce or adjust consumption;
- (f) the distributor's contact information;
- (g) any other information the distributor thinks might be helpful in a supply alert or emergency; and
- (h) any other information requested by the department that the department determines is necessary to address the supply alert or emergency.

(2) During a supply alert or emergency each distributor named in the declaration of the supply alert or emergency shall submit via e-mail to DEQ at [DEQEnergyEmergency@mt.gov](mailto:DEQEnergyEmergency@mt.gov) at a frequency determined by the department or by another method if requested by the department, a report that contains the information in (1).

(3) The department shall inform the public about each supply alert or emergency and actions being taken to address it and actions that the public is requested or required to take.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-308, 90-4-309, 90-4-310, MCA

REASON: ARM 14.8.205 and 14.8.303 require each electricity distributor and each firm within certain categories of petroleum distributors to supply information to the state, if a problem may prevent the distributor from meeting energy requirements of Montana customers. They are proposed to be repealed and New Rule III would consolidate information submission requirements into one rule covering all major energy sectors. The department and Governor's office rely on industry and the public to provide information on events that may lead to an energy supply alert or energy emergency. Section (1) would require energy distributors to inform the department when an event occurs that they or the Governor believe causes, or may cause, an energy supply shortage or other condition that may result in a declaration of a supply alert or emergency. The thresholds for a situation for which distributors are expected to report to the department are taken from the definitions of energy supply alert and energy emergency in 90-4-302, MCA. The reason for basing the thresholds on the statute is that the statute provides flexibility in determining what is an important event for each situation. As each energy situation will be different, this flexibility is needed. Section (1) sets out the information that a distributor would be required to submit to the department in those circumstances. That information is necessary for the Governor to be able to determine if a declaration of a supply alert or emergency is necessary. Because a distributor is familiar with its energy supply system, its customers, and how an event could affect them, it is reasonable for distributors to submit to the department the information in (1) concerning the geographic area affected, the estimated effect on energy customers and on health/human safety, infrastructure, including other energy sectors, transportation, food distribution, and emergency services, expected duration, and recommended actions the public or industry can take to reduce or adjust consumption, as well as other information the distributor or department believes helpful or necessary to address the event.

A phone number for the department duty officer and an e-mail is provided for easy reference. The department will update distributors if this contact information changes.

Section (2) would require, during an alert or emergency, each distributor named in a declaration to submit information to the department, via e-mail daily, or at a different frequency or by another method if necessary, the information in (1). This information is necessary to allow the Governor to manage an alert or emergency while those declarations are in effect.

Section (3) would require that the department inform the public about each declaration of a supply alert or emergency and actions taken or requested to be taken. This is similar to requirements in ARM 14.8.103 and 14.8.211 and is necessary to keep the public informed and to obtain action from the public needed to address the shortage.

NEW RULE IV EVALUATING INFORMATION (1) The department shall evaluate the information provided under [NEW RULE III] and recommend to the Governor one or more actions based on the severity of the shortage.

AUTH: 90-4-316, MCA

IMP: 90-4-304, 90-4-305, 90-4-308, 90-4-309, 90-4-310, MCA

REASON: New Rule IV is proposed to require the Department of Environmental Quality to evaluate the information provided under New Rule III and propose appropriate action to the Governor. This is necessary so that relevant information about an energy shortage will be evaluated and that appropriate action will be recommended to the Governor.

NEW RULE V REQUIREMENT TO FILE MONTHLY REPORTS (1) Each refiner and gas plant operator shall submit monthly plant processing data by fuel type including inventories, receipts, inputs, production, shipments, fuel use, and losses by submitting copies of the federal Monthly Refinery Report (EIA-810) or Monthly Natural Gas Liquids Report (EIA-816).

(2) Each petroleum pipeline company shall submit a monthly report, on the form prescribed by the department, of:

(a) pipeline receipts, deliveries, and inventories by terminal location and consignee for all petroleum products delivered through its Montana system; and

(b) its total quantity of out-of-state imports and exports.

(3) Each prime petroleum supplier shall submit a copy of that supplier's federal Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption (EIA-782C).

(4) Each natural gas supplier shall submit a report of the supplier's sales volumes for natural gas sold in the state using the federal Monthly Report of Natural Gas Purchases and Deliveries to Consumers (EIA-857).

(5) Each petroleum refiner shall submit monthly a copy of that refiner's Montana Board of Oil and Gas Conservation Refiner's Monthly Report of Receipts and Disposition of Crude Oil.

(6) Each report required to be submitted in this rule must be submitted to the department by e-mail to [petroleumdatareporting@mt.gov](mailto:petroleumdatareporting@mt.gov) within 20 days after the end of the month for which the report is being provided.

(7) Each monthly report required in this rule is for a calendar month.

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to adopt New Rule V to require certain types of distributors of petroleum or natural gas in Montana to submit information to the Department of Environmental Quality on a monthly basis concerning the quantities of petroleum or natural gas distributed in the state. This information is necessary for the department to use in evaluating whether shortages are occurring that might lead to a declaration of a supply alert or emergency and to monitor energy supply and consumption during a supply alert or emergency.

NEW RULE VI CORRECTING SUBMISSIONS (1) Any documents submitted under [NEW RULE V] that are subsequently revised must be resubmitted in their revised form by the submitting firm within 10 days after the revision is completed.

(2) The department may request a firm required to submit a report under this subchapter to replace an illegible or missing report. A firm shall submit a replacement to the department via e-mail to [petroleumdatareporting@mt.gov](mailto:petroleumdatareporting@mt.gov) within 30 days after the department sends a written request to the firm by e-mail or U.S. postal mail.

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to adopt New Rule VI to authorize the Department of Environmental Quality to require an entity that is subject to reporting requirements to submit, within 30 days after being sent a written request, revised or replacement reports if either (1) information is erroneous or incomplete and the actual volume is at least five percent different than reported, or (2) a report is missing or illegible. The Governor believes that 30 days gives a reporting party sufficient time to prepare and transmit a revised or replacement report. The requirement is necessary to ensure that the department has adequate information to evaluate shortages and to advise the Governor on the need to declare an alert or emergency or to take specific action during an alert or emergency.

NEW RULE VII TRADE SECRETS, CONFIDENTIAL, OR PROPRIETARY INFORMATION (1) Information submitted under 90-4-305(2), MCA, is subject to 90-4-305(6), MCA.

(2) For information not listed in 90-4-305(2), MCA, that is required to be submitted under this subchapter, if a distributor believes it to be confidential, trade secrets, or of a proprietary nature, and wishes:

(a) not to submit it to the department, the distributor shall inform the department and describe the nature of the information. Unless the department obtains a court order requiring disclosure, the distributor is not required to submit the information to the department;

(b) to submit the information to the department and have it protected it as confidential information, the distributor shall provide an affidavit to the department that establishes, to the department's satisfaction, that the information is confidential. On determining that the information is confidential, the department shall hold the information as confidential and, upon receiving a request for disclosure, may not disclose it unless it first informs the submitter and provides a reasonable period for the submitter to obtain a court order designating the information confidential.

(3) Unless a court orders otherwise, the department shall withhold from public scrutiny information submitted to it under this subchapter if the submitter provides an affidavit that establishes, to the department's satisfaction, that release of the information jeopardizes the safety of an individual or the public.

AUTH: 90-4-316, MCA

IMP: 2-6-1002(1), MCA

REASON: The Governor is proposing to adopt New Rule VII to address claims by entities submitting information required in new subchapter 4 that the submitted information is confidential and may not be disclosed to the public.

First, 90-4-305(6), MCA, provides that the information required to be submitted in 90-4-305(2), MCA, which concerns certain information about petroleum, may not be divulged if it is specific to a particular distributor and that public officers or employees may not be required to release it to a party to an action or proceeding unless the information is directly involved in the action or proceeding. To clarify that the department will follow that statute, the rule refers to the statutory provisions.

Second, the Governor believes it is necessary to set out, in rule, the process for the proper protection or disclosure of other information required to be submitted under the energy supply alert and emergency statutes and rules. Therefore, the Governor is proposing to adopt, in rule, the process established by the Legislature and the Montana Supreme Court to give effect both to the public's right to review and copy public documents and a submitting firm's property rights in, or concerns about public safety from public disclosure of, submitted information.

In 2015, the Legislature repealed the public records laws and adopted new laws in part 10 of Title 2, chapter 6, MCA, codified at 2-6-1002(1), MCA. Section 2-6-1002(1), MCA, defines confidential information as "information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is: "(d) designated as confidential by statute or through judicial decisions, findings, or orders."

Section 2-6-1002(11), MCA, defines "public information" broadly, but excludes from that definition "confidential information that must be protected against public disclosure under applicable law." Section 2-6-1003(1), MCA, states that "every person has a right to examine and obtain a copy of any public information of this state," but (2) authorizes the department to "withhold from public scrutiny information relating to individual or public safety...if release of the information jeopardizes the safety of...the public...". These statutory changes must be viewed in the context of decisions of the Montana Supreme Court. That Court has interpreted the Montana Constitution to require protection of a business's trade secrets and other proprietary and valuable information. In *Great Falls Tribune v. Public Service Commission*, 2003 MT 369, ¶ 39, 319 Mont. 38, 82 P.3d 876, the Court held that, while a corporation has no privacy right to prevent public disclosure of its information, it may have a property right if the information is a trade secret or property that is entitled to protection from being taken for public use without just compensation. The Court further held that, to claim protection of a property right in information, the submitting entity must file a supporting affidavit with the state agency receiving the information that shows that the information "constitutes property rights which are protected under constitutional due process requirements." The Court further stated that the showing must be specific enough for the agency, any objecting person, and reviewing authorities to clearly understand the nature and basis of the claims to confidentiality. *Great Falls Tribune*, ¶¶ 56-57. The Court also determined that, given the purpose and expertise of state administrative agencies, the receiving state agency must make

the initial determination of whether the information is protected from disclosure. ¶¶ 43, 56.

So, to give effect to 2-6-1002 and 2-6-1003, MCA, the Governor is proposing rule language authorizing the department to withhold from public scrutiny information submitted to it under this subchapter if the department determines, based on an affidavit provided to it by the submitter of the information, that the information is a trade secret, proprietary or otherwise confidential, or that release of the information jeopardizes the safety of an individual or the public.

If the department determines that the information should be withheld from public scrutiny because of its confidential business nature, the department may not disclose the information until, upon receiving a request for disclosure, it informs the submitter of the request and provides the submitter a reasonable period to obtain a court order designating the information confidential. If the department determines that release of the information would jeopardize individual or public safety, the department may not release it unless a court orders the release.

NEW RULE VIII EXCEPTIONS FROM COMPLIANCE (1) The Governor, in a declaration of an alert or emergency, may authorize the department to relieve a firm or governmental entity from a duty to comply with a provision of this subchapter if the department determines that compliance is not necessary to plan, prepare for, or implement a supply alert or emergency.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-313, MCA

REASON: New Rule VIII would authorize the Department of Environmental Quality to relieve a firm or governmental entity from complying with a requirement of the energy emergency rules in new ARM Title 14, chapter 8, subchapter 4 if the department determines that compliance is not necessary to plan, prepare for, or implement a supply alert or emergency. The reason for this new rule is that the intent of these rules is to require actions that will significantly help response and recovery efforts in an impending or actual energy supply alert or emergency. Because the Governor wishes to promote regulatory efficiency and minimize costs, actions that do not significantly help response and recovery efforts would not be of use to the state and therefore should not be required. Delegating to the department, which has staff with expertise concerning energy supply matters, the authority to grant relief from complying with a requirement would allow it to act to accomplish the purposes of the subchapter without requiring unnecessary actions.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m. September 20, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Norm Mullen, attorney for the department, has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at [sscherer@mt.gov](mailto:sscherer@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal and adoption of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

GOVERNOR'S OFFICE

/s/ Raphael Graybill  
RAPHAEL GRAYBILL  
Rule Reviewer

BY: /s/ Patrick Holmes  
PATRICK HOLMES  
Natural Resource Policy Advisor

Certified to the Secretary of State, July 30, 2019.